The High Court has recently settled the famous “battle of forms” and declared a new winner – which will typically be the customer.

Suppliers beware!

Most businesses will be familiar with the famous “battle of forms” where both sides keep swopping standard terms and conditions which contradict each other.

Typically, both sides ignore the issue, process the order, and get on with commercial life.

Although the law has always been a bit doubtful, the general view was that the last set of terms and conditions to be sent governed the contract. Last month, however, after several “hints” in other cases, the High Court ruled that the clash between the Buyer’s and the Seller’s terms meant that neither of them was effective, and all the parties had agreed was a basic contract for the Seller to supply goods/services for an agreed price.

This was painful for the Seller in the particular circumstances, because it meant that the contract was governed by the implied terms in the Sale of Goods Act and all the Seller's exclusion clauses and limitations of liability were avoided.

It is therefore essential that every business carefully considers its ordering processes and make sure that its essential terms are accepted and incorporated into the transaction. The safest and easiest way of achieving this, is to require the Buyer to sign an acknowledgement of the terms that will apply.